

OCT 21 1994

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF SECRETARY

In the Matter of )  
 ) Docket No. \_\_\_\_\_  
 Amendment of Section 95.813(b) )  
 Eligibility ) RM: \_\_\_\_\_  
 System License Requirements )  
 Interactive Video and Data Service )

TO: Chief, Private Radio Bureau

**PETITION FOR RULEMAKING**

The Interactive Television Association ("ITA"), by its attorneys and pursuant to Section 1.401 of the Commission's Rules, herewith petitions the Commission to institute a Rulemaking Proceeding to amend Section 95.813 of the Commission's Rules by deleting subsection (b)(1) which prohibits an entity from owning both Interactive Video and Data Service ("IVDS") system licenses or an interest in both IVDS system licenses for the same service area.

Under the Rules, the Commission has allocated the entire 218 - 219 MHz band for IVDS. See, 47 C.F.R. §2.106. The band is divided into two (2) frequency segments. Frequency segment A is 218.0-218.500 MHz and frequency segment B is 218.500-219.0 MHz. 47 C.F.R. §95.853(a). Each frequency segment is licensed to a separate entity and under the current rules, the same entity cannot hold licenses for both frequency segments nor can the same entity have an interest in the licenses for both frequency segments. See 47 C.F.R. §95.813(b)(1).

The Commission split the band and prohibited ownership of the entire band by one entity in order to ensure competition in each

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market. In the Notice of Proposed Rulemaking ("NPRM"), the Commission stated that "[w]e believe the best way to provide for competition in the IVDS is to make at least two facilities available in each market." 6 FCC Rcd 1368, 1371 (1991). The Commission "... believe[d] that it [was] reasonable to expect that two IVDS systems could exist in the same geographic area without limiting the ability of either to provide adequate service." Id.

While the Commission's reasoning may have been appropriate in 1991 when it issued the NPRM and in 1992 when it first established the rules for IVDS, the situation in 1994 is different. It is no longer necessary to prohibit one entity from owning both IVDS system licenses in the same market in order to ensure competition. Indeed, such a prohibition may have the opposite effect. With the number of large and well-financed companies clamoring to provide interactive services to the public, the individual IVDS system licensees, largely composed of small and designated entity businesses, will have substantial difficulty competing with financial behemoths, therefore impeding the development of wireless interactive services.

Since 1991 interest in interactive television has exploded. A variety of major communications companies, including telephone companies and cable companies, have invested in developing interactive television, have established subsidiaries for such purposes and have entered into joint ventures in order to exploit the technology. The competition with which the Commission was

concerned with in 1991 is not a problem in 1994 and will not be a problem in the future.

Telecommunications companies such as US West, AT&T and Time Warner have started developing, and in some cases are offering, interactive technology to subscribers. US West created a wholly owned subsidiary, Interactive Video Enterprises Inc., to provide interactive marketing and merchandising for US West's video dial tone trial in Omaha, Nebraska. Berniker, US West ventures into cable territory, Broadcasting & Cable, June 27, 1993, at 33. Similarly, Time Warner Cable is offering a full service network to subscribers in Orlando, Florida which includes movies on demand, interactive shopping and video games. Berniker, Time Warner Full Service Net drops initial goal, Broadcasting & Cable, October 10, 1994, at 94. In addition, AT&T has arrangements with Viacom and GTE to set up trials of digital interactive television in the Castro Valley, California and Manassas, Virginia markets respectively. Berniker, Path to Interactive TV a rough one, Broadcasting & Cable, August 29, 1994, at 23. With these media giants providing hard wire interactive services in markets throughout the country, it will be extremely difficult for the individual IVDS licensees for wireless interactive television to compete.

The telecommunications giants have made no efforts to invest in or utilize the wireless technology. These companies did not participate in the recent auctions for IVDS licenses, undoubtedly because they view IVDS as competition to their hard wire services.

Most of the auction winners are small businesses or individuals who would benefit from an alliance with these larger and financially stronger companies. Clearly, however, these telecommunications conglomerates have no interest in such alliances and have set themselves up as competitors with the IVDS licensees. In most markets, the IVDS licensee will be the loser in this competition.

If, however, the A and B licensees in each market are permitted to work in cooperation with one another, or if one licensee is permitted to own both licenses or have an interest in both licenses, the two former competitors could pool their efforts and resources to provide competition to other telecommunications companies offering interactive television service in the market. Allowing the two licensees in each market to work together or the two licenses to be jointly owned will not reduce competition but will instead help to ensure a viable competitor to the other telecommunications companies offering wireline interactive service in the market. If such cooperation and joint ownership of licenses is not permitted by the Commission, there is a strong possibility that IVDS systems in many markets will not survive and that the only competitors that will survive will be the large telecommunications corporations, resulting in perhaps only one service to the home and the need for rate regulation. Such a result is not in the public's best interest and surely was not the goal of the Commission when it established the IVDS service.

In similar situations, the Commission has eased regulatory prohibitions and allowed cooperation between two licensees or joint ownership of licenses in the same market in order to foster the development of new wireless technologies that can provide competition to established hard wire services. In 1990, the Commission decided to allow the licenses for both the Multichannel Multipoint Distribution Service ("MMDS") E and F-Group channels to be owned by one licensee. See Report and Order, 68 RR 2d 429 (1990). The Commission recognized that in order to effectively compete with coaxial cable operators in a market, a wireless cable licensee had to aggregate enough channels to offer a competitive programming line-up to subscribers. Id. The Commission stated that the "MDS channels will provide a more significant benefit to the public if used collectively by a single operator in each community . . . than if used individually by multiple operators in each community competing against each other." Id. at 434. This reasoning is also applicable to IVDS.

The A and B licensees in each market will provide a greater benefit to the public if allowed to work together to provide IVDS service to subscribers in a market. Cooperation between the two licensees or joint ownership of licenses will ensure more effective competition against other interactive television providers. If the Commission fails to recognize the benefit to the public in allowing cooperation and joint ownership, thereby forcing IVDS licensees to compete against one another as well as against other telecommunications conglomerates, IVDS service will suffer and this


could ultimately prove detrimental to the development of IVDS service.

WHEREFORE, it is respectfully requested that the Commission issue a Notice of Proposed Rulemaking to amend Section 95.813 (b) (1) of the Commission's Rules to delete the prohibition on ownership of two IVDS system licenses in the same market.

Respectfully submitted,

**INTERACTIVE TELEVISION ASSOCIATION**

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